



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Hawai'i

**BY EMAIL AND  
CERTIFIED MAIL**

October 9, 2018

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**Re: Avoiding Unlawful Discrimination Against Muslim Applicants for  
Driver's Licenses by the County of Kaua'i Drivers License Division**

Dear Mr. Drake, Mr. Shimonishi, and Mr. Trask:

The ACLU of Hawai'i Foundation ("*ACLU of Hawai'i*") writes both (1) to inform you of a recent case of unlawful discrimination against a Muslim applicant for a driver's license by the Hawai'i County Vehicle Registration and Licensing Division ("*Hawai'i County DMV*"), and (2) to request that the County of Kaua'i Drivers License Division ("*Kaua'i County DMV*") confirm that it does not have rules, policies, or practices similar or identical to those of the Hawai'i County DMV

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that unlawfully discriminate on the basis of religion in violation of the First Amendment.

The ACLU of Hawai‘i currently represents Laycie Tobosa, a Muslim woman living in Hilo who wears a hijab—a headscarf that some Muslim women wear—because of her religious beliefs. Earlier this year, the ACLU of Hawai‘i learned that the Hawai‘i County DMV was engaging in certain policies and practices that unlawfully discriminated against Ms. Tobosa on the basis of religion and impermissibly burdened Ms. Tobosa’s free exercise of Islam. Specifically, the Hawai‘i County DMV has policies and practices: (1) requiring that, in order to be eligible for a religious accommodation in taking their identification photograph, religious applicants obtain a letter from the University of Hawai‘i (“UH”) Religion Department “confirming” their religious beliefs in violation of the Free Exercise Clause of the First Amendment, and (2) requiring that certain religious driver’s license applicants—and only such applicants—show both ears when taking photos for identification purposes in violation of the Establishment Clause of the First Amendment. Due to these policies and practices, Ms. Tobosa experienced substantial hardship over the course of a nearly five-month-long process to convince the Hawai‘i County DMV to issue her a full driver’s license.

The letter that the ACLU of Hawai‘i sent to the Hawai‘i County DMV on Ms. Tobosa’s behalf is enclosed. In light of Ms. Tobosa’s incident—and to ensure that Muslim and other similarly situated religious applicants living in the County of Kaua‘i are not unlawfully discriminated against—the ACLU of Hawai‘i requests that you (1) review the enclosed letter; (2) examine the Kaua‘i County DMV’s existing rules, policies, and practices relating to religious accommodations; and (3) respond to the ACLU of Hawai‘i with a letter confirming that the Kaua‘i County DMV’s rules, policies, and practices (a) do not require religious applicants to obtain a letter from the UH Religion Department (or any other entity) “confirming” their religious beliefs and (b) are consistent with the Department of Homeland Security’s guidance that the REAL ID Act “does not require the exposure of the hair line or the ears” for “an applicant who wears a head covering for religious reasons.”<sup>1</sup>

Further, regardless of the rules, policies, and practices currently in place,<sup>2</sup> we suggest that the Kaua‘i County DMV provide written guidance and training on

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<sup>1</sup> Dep’t of Homeland Sec., *REAL ID Frequently Asked Questions for State Implementation* (Oct. 2, 2017), <https://www.dhs.gov/real-id-faq-implementation>.

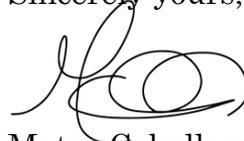
<sup>2</sup> We could not confirm what rules, policies, and practices relating to religious accommodations are presently in effect in the County of Kaua‘i. But we understand that the County of Kaua‘i requires religious applicants to obtain “confirmation” letters from the UH Religion Department. In any event,

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religious accommodations to its employees to ensure its rules, policies, and practices are consistent with the U.S. Constitution. To the extent that the Kaua'i County DMV does not have a written policy on religious accommodations, we would be happy to work with you to that end. Finally, the public would benefit from the Kaua'i County DMV updating its website and public-facing materials to clarify its policy on religious accommodations.

We would appreciate your response acknowledging receipt of this letter and confirming the date by which you will submit the requested response. Thank you in advance for your time and attention to this matter. If you have any questions or comments, please feel free to contact me at 808-522-5908 or [mcaballero@acluhawaii.org](mailto:mcaballero@acluhawaii.org).

Sincerely yours,

A handwritten signature in black ink, appearing to read 'Mateo Caballero', with a stylized flourish at the end.

Mateo Caballero  
Legal Director

Enclosure: October 9, 2018 letter from ACLU of Hawai'i to Hawai'i County Vehicle Registration and Licensing Division

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the public's uncertainty of the rules, policies, and practices presently in effect underscores the need for clarification from the Kaua'i County DMV.